

December 7, 2022

Via Electronic Delivery

Re: *Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)*, Docket No. 21-CRB-0001-PR (2023-2027)

Chief Copyright Royalty Judge David P. Shaw  
Copyright Royalty Judge Steven Ruwe  
Copyright Royalty Judge David R. Strickler  
U.S. Copyright Royalty Board  
101 Independence Ave., SE  
Washington, DC 20024-0977

**Comments of Songwriters of North America (SONA) in Support of the  
Proposed Settlement for Phonorecords IV Subparts A, C and D (87 Fed. Reg. 66978 et. seq.  
(Nov. 7, 2022))**

To the Copyright Royalty Judges:

Thank you for providing this opportunity for our organization to submit comments to the settlement proposed by NMPA, NSAI (the “Copyright Owners”) and the Digital Streaming Services (the “DSPs”) in connection with the Copyright Royalty Board (“CRB”) Phonorecords IV, Subparts A, C & D rates and terms.

***Organizational Background***

The Songwriters of North America (“SONA”) is a membership organization founded in 2015 by a group of songwriters, composers and music industry professionals determined to advocate for themselves in an increasingly challenging digital economy. SONA has since evolved into a trade association and hub for thousands of engaged, working music creators, representing the boots-on-the-ground songwriters and composers who call making music their job.

***Comments***

Although our organization is not a participant in the proceeding resulting in the settlement which is the basis of the proposed regulations, SONA’s members are deeply impacted by the proposed rates and terms. One of SONA’s board members, songwriter and producer Autumn Rowe, was even selected to be a songwriter witness if there were to be a trial. We support the proposed regulations, and urge the Judges to adopt the proposed rates and terms for all affected copyright owners and licensees. We would also like to express our gratitude to the copyright owners and DSPs involved in the settlement process. We appreciate those parties for being willing to work together to achieve a reasonable compromise for the period covered by the proposed regulations.

We hope this might set a precedent for future negotiations, and that some long-needed goodwill provides solid ground from which to move forward.

We believe the biggest benefit of this proposed settlement is that the Phonorecords IV determination will be reached in a timely manner. The years of uncertainty created by the contentious trial of Phonorecords III, and the long and drawn-out appeals process, created real hardships for our members who depend on these royalties to put food on the table.

We do, as songwriters ourselves, have a few caveats:

Most importantly, we hope the CRB and all interested parties will eventually acknowledge that the value of the underlying work should commensurately reflect the fact that "the song" is the foundation which the music industry is built upon, and should not receive the smallest share of the revenue it creates. So, while appreciating that this settlement is an important step in the right direction, in that it is an increase, we maintain that an increase from 15.15% to 15.35% should be thought of as part of the journey, but not the destination.

We would like to state for the record, how difficult the CRB process is for our members and to emphasize that our support of this settlement is largely due to our belief that it is not in our members' best interest for this proceeding to be drawn out in the manner of previous determinations. The opacity of the hearings and scant information we receive during trials are frustrating, and the prohibitive costs of being an active petitioner in these discussions ourselves make it almost impossible for any individual songwriters and most creator organizations to participate. This results in underrepresented voices becoming increasingly marginalized and, therefore, increasingly disproportionately impacted.

For inclusion in your consideration, attached is a recent *Rolling Stone* article with quotes from myself and fellow SONA Board member, songwriter Lauren Christy, titled 'The Job Is Going to Die': Songwriters Say More Change Is Needed to Survive in the Music Industry (Exhibit A). The bleak title of the piece reflects our current reality. However, we hope that with the proposed rate increases, some imminent forward motion and some certainty, at least for the next five years, we have reason to be optimistic for our future.

Sincerely,



Michelle Lewis  
Executive Director - Songwriters of North America





SWAN SONG?

## ‘The Job Is Going to Die’: Songwriters Say More Change Is Needed to Survive in the Music Industry

While a recent ruling from a little-known copyright judge panel has songwriters cautiously optimistic, much more is needed, songwriters say

BY ETHAN MILLMAN

NOVEMBER 28, 2022



LAUREN CHRISTY HAS had a hand in some of the biggest hits of the past 20 years. As a songwriter and producer, she's made a living co-writing hits like Avril Lavigne's "Sk8ter Boi," "Complicated" and "I'm With You" alongside Jason Mraz's breakout single "The Remedy (I Won't Worry)," and tracks for Liz Phair and Britney Spears.

Even with her success, Christy knows that banking on a career in the music industry has always been a gamble. But as revenue streams have changed over the past decade, she's grown increasingly concerned that a job writing songs for recording artists eventually won't exist anymore.

"On this current path, we are heading towards a national funeral for the songwriting profession," says Christy. While artists and record producers who also write songs can still make it, she says, those whose careers have been solely in songwriting for others are becoming rarer and could become extinct without further industry intervention to give them more equity. "I've heard there's only 20 full-time professional poets in America," Christy tells *Rolling Stone*, "And that's the way songwriting is going without a carve-out. It'd be bye-bye to the next Burt Bacharach or Diane Warren."

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Evan Bogart — chair of the Recording Academy's Songwriter and Composer's wing and co-writer on Beyonce's "Halo" and Rihanna's "SOS" — takes Christy's outlook a step further. "I think the funeral already happened. I don't think there is a middle class of songwriters," he says. "There's brand new songwriters who are just starting out, some who've had a little bit of success who are living off their



Such sentiments aren't new; for years, veteran songwriters have pushed for answers and action on their dwindling revenue and to get more equity in an industry they feel is becoming unsustainable. But recent legislation from an obscure branch of the Library of Congress has kickstarted conversation regarding songwriters' ongoing gripes. And While Bogart and Christy's outlook on the future of their craft seems ominous, they aren't only looking to sound the alarms. In fact, the recent ruling has them optimistic for larger songwriter victories going forward.

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One of the most significant decisions the music industry agreed to in the next five years wasn't decided in a recording studio, concert venue or corporate boardroom, but on Capitol Hill. At the end of August, the major streaming services entered a new agreement with music publishers through a system called the Copyright Royalty Board, a panel of three judges appointed by the Librarian of Congress that convenes to determine the fate of publishers' and songwriters' royalties for the following five years. Since September, the industry has waited for the CRB to actually order the agreement into law, which is expected soon (the proposal is currently in a public comment period).

The agreement was largely celebrated by several industry figures as a significant victory for publishers and songwriters, a juxtaposition from the "funeral" the songwriters had mentioned.

Having direct power over the music industry's cash flow, the CRB hearings make up some of the most crucial precedent in the business, deciding how much music publishers, and subsequently songwriters, get paid for their music from the likes of tech giants such as Spotify, Apple, Amazon and Google through a streaming rate known as mechanical licenses. But the proceedings don't get much coverage outside of industry press, mainly because the content can be both extremely technical and incredibly mundane-sounding.



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“Once you say the words ‘mechanical licenses or consent decrees, everyone’s eyes glaze over,” says Michelle Lewis, a songwriter who’s worked with Cher and Little Mix and is the executive director of the advocacy group Songwriters of North America.

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Nonetheless, the hearings are crucial. Getting the songs you listen to every day on streaming services is the result of satiating music’s convoluted copyright system.

Given the billions of dollars at stake, previous rulings in the CRB system have been thorny. The streaming services and publishing groups had an all-out brawl over the rates for 2018-2022, which took years to settle before the CRB finally raised the rate by over 40 percent last summer, a significant victory for songwriters that brought royalties up for publishers from 10.5 to 15.1 percent.

The recent hearings for the rates from 2023 to 2027 avoided such drama, and the rates will rise over the next five years by a much more modest figure, from 15.1 to 15.35 percent. But even a half-percent increase represents hundreds of millions of dollars, and 15.35 percent is the highest rate the music business has ever seen.

“This historic settlement is the result of songwriters making their voices heard. Instead of going to trial and continuing years of conflict, we instead move forward in collaboration with the highest rates ever, guaranteed,” David Israelite, CEO of the trade group the National Music Publishers Association, said in a statement after the agreement. “We thank the digital services for coming to the table and treating



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## “On this current path, we are heading towards a national funeral for the songwriting profession”

lauren christy

Every songwriter who spoke to *Rolling Stone* called the CRB ruling a step forward but stopped short of calling it a resounding victory. They describe it more as a sigh of relief that their revenues won't decrease (and that the fate of their royalties won't be thrown into another major legal battle).

“It's important that they settled. Of course we want more, but 15.35 percent will be the highest rate in the world, so let's see. We now have some certainty in the marketplace; we don't have to wait to see what they're going to pay us,” Lewis says.

However, the jump from 15.1 to 15.35 percent on its own won't change anything unless you already had a lot of pull in the first place, Lewis adds. “It's not nothing, but there's still two zeros after the decimal point for rates. For publishers or writers with multiple hits, anyone with market share at scale, they're stoked because this is a format that rewards scale. But this doesn't help anyone below the 1 percent [richest writers].”

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Still, the songwriters say the ruling does present an opportunity for more changes ahead. As Bogart says, “I actually think the CRB ruling is a sign of a resurrection,” noting that the better rates, coupled with more specific definitions on how certain payment mechanisms work, is a strong step forward.





some three-judge rate court. A better ecosystem for songwriters is more than just the CRB rates.”

Many of the songwriters who spoke to *Rolling Stone* suggested some of the same sorts of interventions they’d like to see the industry adopt en masse, including day rates for songwriters to ensure they get paid beyond song royalties for their time and restructured publishing deals. Perhaps most significantly, they ponder if the industry would eventually take to giving songwriters a percentage from the master recording royalties, income that brings in the most money but that songwriters typically can’t touch.

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**“The reality is that we have a long way to go, and we will continue to support and fight for songwriters to earn a livable wage”**

**michelle lewis**

With the CRB rates set and songwriters now knowing what they’ll get from streaming services, many will now be looking to labels and artists for increased revenue on that end.

“The one thing the label doesn’t pay for is the songwriter. Set aside a non-performing songwriter royalty pool, a percentage that doesn’t come out of the artist’s share,” Lewis says. “The artist has percentage points, the producer has points, why can’t there be a pool of revenue based on success of the record that goes to non-performing songwriters? The job is going to die; it’s not going to last if there isn’t some kind of redistribution of profit.”

Lewis doesn’t balk at the idea of an artist giving a percentage from their own royalty share, but said it would make more sense coming from the labels given their share of the pie and the extra expenses the artists already take on. At least, she says, there could be a means of doing so that won’t cause any one faction to be solely responsible.

Christy, who also runs her own indie label called Youth Be Served Records, says she already gives songwriters a day rate for their work, along with a percentage on the recording if the song takes off. “If the song’s making me money, they’re going to get paid too,” she says.

Such sentiments have been reflected during the CRB’s open comment period as well. Tiffany Red, founder of songwriter advocacy group the 100 percenters, touched on the current dynamic in [a letter she submitted](#) to the Copyright Royalty Board last week.





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“We must not forget the biggest grievance; record companies are still earning the biggest piece of the pie while keeping their overhead costs low due to digital distribution. Meanwhile, songwriters remain the lowest earners,” Red wrote. “We are in no way trying to minimize the victory that was made with this settlement. However, the reality is that we have a long way to go, and we will continue to support and fight for songwriters to earn a livable wage.”

Whether or not labels would take such a step isn’t clear. Thomas Scherer, BMG’s US president of repertoire and marketing, agrees with the songwriters, saying in a statement to *Rolling Stone* that songwriters don’t have enough equity in the business and that for more lasting change, the labels need to step forward. Still, he didn’t confirm whether BMG would actually institute any of those changes themselves.



### **“Only the tech platforms benefit when music creators are pitted against each other in a race to the bottom”**

“It’s hard to feel celebratory when the song and the songwriter still get the smallest slice of the pie. That’s not to criticize the NMPA – under the existing legal framework we got as much as was there,” Scherer says. “But I refuse to tell BMG’s songwriter clients that [what amounts to] a \$23 pay rise per million streams in five years time is a resounding victory. What this deal says to us is that songwriters have essentially done as well as they are ever likely to do under the status quo where record labels first take their 55%-or-so share and then leave DSPs and songwriters to fight it out over the balance while supervised by a court. Logically, if songwriters are to get more, record labels need to take less. That would be the fair and equitable approach.”



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more, but he didn't shoot it down.

"Our label revenues would suffer. But that doesn't mean it's not the right thing to do," Scherer said. "If I could live with it, even though my label revenues would be down, I don't understand why any pure play music publisher wouldn't say the same when there's only upside for them."

When asked if the record companies would be willing to cede some of its share to give to songwriters, the Recorded Industry Association of America — which represents record labels including Universal Music Group, Sony Music Entertainment and Warner Music Group — focused instead on improving the CRB process and suggested they could make changes that wouldn't require labels to give up more.

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"Songwriters have been saddled with government mandates and restrictions that artificially diminish their pay. Record companies have long stood with them fighting for reforms such as the Music Modernization Act," a rep for the RIAA tells *Rolling Stone*. "More recently, RIAA and its members have been at the forefront of ... calls for greater transparency and participation at the CRB. There is room for all creators to thrive without taking from each other [and] we are always strongest when we stand together as one."

That final point is common among record label reps, who often say the notion of the labels having to take less in order for other creators to make more is a talking point from the streaming services. As one industry source says: "Only the tech platforms benefit when music creators are pitted against each other in a race to the bottom." (Reps for both Apple Music and Spotify didn't respond to requests for comment.)

The labels can say places like Spotify need to give more, or that it'd be the artists' responsibility to cede royalties if songwriters call for more. Spotify can retort that it can't afford to increase payments, and that creators should ask the labels why their earnings aren't trickling down to them. Regardless of the



And without songwriters, the music industry, and the music itself, will be worse. “[Without songwriters] the industry won’t be thinking about the greater level of creativity and to me that’s sad. Some of the greatest songs in the world in history have a wonderful songwriter behind the scenes working with the artist. Without the songwriting, at some point all this just becomes content.”

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